

BUTLER & BINION  
1600 FIRST INTERSTATE BANK PLAZA  
1000 LOUISIANA  
HOUSTON, TEXAS 77002-5093  
(713) 237-3111  
TELEX 775532 (WU)  
TELECOPIER 237-3201 237-3202

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING  
PROFESSIONAL CORPORATIONS

WASHINGTON, D.C.  
(202) 466-6900

DALLAS  
(214) 220-3100

SAN ANTONIO  
(214) 227-2200

November 30, 1990

0-3-40 A034  
17101  
RECORDATION NO. FILED 1225

DEC 5 1990 -2 30 PM

INTERSTATE COMMERCE COMMISSION

DEC 5 2 23 PM '90  
NOTICE OPERATING UNIT

Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue N.W.  
Washington, D. C. 20423

Dear Secretary:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303 are the original and a fully executed acknowledged counterpart of a Commercial Security Agreement dated as of November 30, 1990, a primary document as defined in the Commission's Rules for the recordation of documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Railtex, Inc.  
4040 Broadway, Suite 200  
San Antonio, Texas 78209

Secured Party: First Interstate Bank of Texas, N.A.  
1000 Louisiana  
P. O. Box 3326  
Houston, Texas 77253-3326

Included in the property covered by the aforesaid Commercial Security Agreement are three locomotives bearing the frame numbers 5469-10, 5398-2 and 5398-5, intended for use related to interstate commerce, or interests therein, owned by Railtex, Inc. at the date of said Commercial Security Agreement.

Also enclosed is a check in the amount of \$15.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

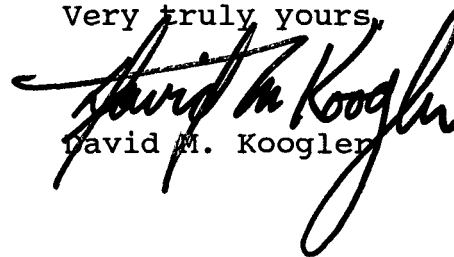
Please return the stamped original and fully executed acknowledged counterpart of the enclosed document to David M. Koogler, Butler & Binion, 1000 Louisiana, 1600 First Interstate Bank Plaza, Houston, Texas 77002.

Secretary  
Interstate Commerce Commission  
November 30, 1990  
Page 2

A short summary of the enclosed primary document to appear in the Commission's Index is:

Commercial Security Agreement dated as of November 30, 1990, executed by Railtex, Inc., a Texas corporation, Debtor, for the benefit of First Interstate Bank of Texas, N.A., Secured Party, covering three certain locomotives bearing the frame numbers 5469-10, 5398-2 and 5398-5, intended for use related to interstate commerce, or interests therein, owned by Railtex, Inc., at the date of said Commercial Security Agreement.

Very truly yours,



David M. Koogler

Enclosures

cc: Mr. Joseph H. Argue, III  
Senior Vice President  
First Interstate Bank of Texas, N.A.  
1000 Louisiana, 3rd Floor  
Houston, Texas 77002  
(w/o enclosures)

Mr. Robert R. Lende  
Vice President - Finance  
Railtex, Inc.  
4901 Broadway  
Suite 231  
San Antonio, Texas 78209  
(w/o enclosures)

BUTLER & BINION  
1600 FIRST INTERSTATE BANK PLAZA  
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HOUSTON, TEXAS 77002-5093  
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PROFESSIONAL CORPORATIONS

WASHINGTON, D.C.  
(202) 466-6900  
DALLAS  
(214) 220-3100  
SAN ANTONIO  
(512) 227-2200

December 5, 1990

By Federal Express

Interstate Commerce Commission  
12th Street and Constitution Ave. N.W.  
Washington, DC 20423

Attn: Ms. Mildred Lee

Dear Ms. Lee:

Enclosed are two checks, each in the amount of \$15.00 (for a total of \$30.00) payable to the order of Interstate Commerce Commission covering the required recordation fees in connection with the First Amendment to Security Agreement dated as of November 30, 1990, by and among Mid-Michigan Railroad, Inc., Railtex, Inc. and First Interstate Bank of Texas, N.A. and the Commercial Security Agreement dated as of November 30, 1990 by and between First Interstate Bank of Texas, N.A. and Railtex, Inc.

The originals of these documents were transmitted to you by cover letter dated November 30, 1990. Should you have any questions or comments, please call me at (713) 237-3206.

Thank you for your assistance in connection with this matter.

Very truly yours,

  
David M. Koogler

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

12/19/90

OFFICE OF THE SECRETARY

David M. Kogler

$\frac{1}{2}$

Butler & Binion

1000 Louisiana

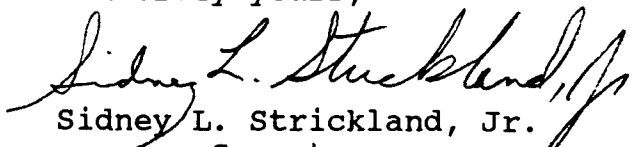
1600 First Interstate Bank Plaza

Houston, Texas 77002

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/19/90 at 2:30pm, and assigned recordation number(s). 15849-A & 17101

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17101

RECORDING NO. \_\_\_\_\_ FILED 1425

DEC 5 1990 -2:50PM

## COMMERCIAL SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

This Commercial Security Agreement is entered into this 30th day of November, 1990, by and between FIRST INTERSTATE BANK OF TEXAS, N.A., a national banking association ("Secured Party"), 1000 Louisiana, Houston, Texas 77002, and RAILTEX, INC., a Texas corporation ("Debtor"), 4040 Broadway, Suite 200, San Antonio, Texas 78209.

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Debtor grants to Secured Party the security interest (and the pledges and assignments as applicable) herein-after set forth and agrees with Secured Party as follows:

A. OBLIGATIONS SECURED. The security interest and pledges and assignments as applicable granted hereby are to secure punctual payment and performance of the following: (i) certain promissory note of even date herewith in the original principal sum of \$500,000 executed by Austin Railroad Company, Inc., a Texas corporation (the "Borrower"), and payable to the order of Secured Party, and any and all extensions, renewals, increases, modifications and rearrangements thereof (the "Note") and the guaranty of same by Debtor, of even date therewith, and any and all extensions, renewals, increases, modifications and rearrangements thereof, (ii) the obligations of Debtor and/or the Borrower to Secured Party under that certain loan agreement, of even date herewith, by and among Debtor, the Borrower and Secured Party (the "Loan Agreement"), and all extensions, renewals, increases, modifications and rearrangements thereof; and (iii) any and all other indebtedness, liabilities and obligations whatsoever of the Borrower to Secured Party whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several, or joint and several (all of which are herein separately and collectively referred to as the "Obligations"). Debtor acknowledges that the security interest hereby granted shall secure all future advances as well as any and all other indebtedness, liabilities and obligations of the Borrower to Secured Party whether now in existence or hereafter arising.

B. USE OF COLLATERAL. Debtor represents, warrants and covenants that the Collateral will be used by the Debtor primarily for business use.

C. DESCRIPTION OF COLLATERAL. Debtor hereby grants to Secured Party a security interest in (and hereby pledges and assigns as applicable) and agrees that Secured Party shall

continue to have a security interest in (and a pledge and assignment as applicable), the following property, to wit:

Those three locomotives bearing the frame numbers 5469-10, 5398-2, and 5398-5, as well as any accessions, additions and attachments thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes, drafts, acceptances, securities, instruments, chattel paper, insurance proceeds payable because of loss or damage, ~~or other property~~, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the property described herein or other proceeds of any sale or other disposition of such property (the "Collateral").

D. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR.  
Debtor represents and warrants as follows:

1. Ownership; No Encumbrances. Except for the security interest (and pledges and assignments as applicable) granted hereby and as otherwise permitted in the Loan Agreement, the Debtor is, to its knowledge and belief, and as to any property acquired after the date hereof which is included within the Collateral, Debtor will be, the owner of all such Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

2. No Financing Statements. There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, and Debtor will not execute and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Secured Party.

3. Accuracy of Information. All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same is furnished, accurate and complete in all material respects.

4. Authority. Debtor has full right and authority to execute and perform this Agreement and to create the security interest (and pledges and assignment as applicable) created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of incorporation, bylaws or similar document respecting Debtor, any provision of law, any

order of court or governmental agency, or any indenture or other agreement to which Debtor is a party, or by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement or permitted under the Loan Agreement.

5. Addresses. The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor has only one place of business; Debtor's chief executive office if Debtor has more than one place of business; or Debtor's residence if Debtor has no place of business. Debtor agrees not to change such address without advance written notice to Secured Party.

E. GENERAL COVENANTS. Debtor covenants and agrees as follows:

1. Operation of the Collateral. Debtor agrees to maintain and use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner or for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

2. Condition. Debtor shall maintain, service and repair the Collateral so as to keep it in good operating condition. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

3. Assessments. Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Debtor or with respect to the Collateral or any part thereof, except as permitted under the Loan Agreement and such as are being contested in good faith by proper proceedings timely instituted and for which adequate

reserves have been provided in accordance with generally accepted accounting principles.

4. No Encumbrances. Debtor agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof, except as permitted under the Loan Agreement and such as are being contested in good faith by proper proceedings timely instituted and for which adequate reserves have been provided in accordance with generally accepted accounting principles.

5. No Transfer. Except as otherwise provided in this Agreement with respect to inventory or as permitted in the Loan Agreement and with respect to leases in the ordinary course of business, Debtor shall not, without the prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

6. Notices and Reports. Debtor shall promptly notify Secured Party in writing of any change in the name, identity or structure of Debtor, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Debtor or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Debtor or the Collateral. Debtor shall furnish such other reports, information and data regarding Debtor's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.

7. Additional Filings. Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable state law of the jurisdiction where any of the Collateral is located or other applicable federal law) and to preserve and protect the Secured Party's rights to the Collateral.

8. Protection of Collateral. Secured Party, at its option, after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, (b) place and pay for insurance on the Collateral, including insurance that only protects Secured



Party's interest, (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral, (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Debtor agrees to promptly reimburse Secured Party upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor at the lesser of the default rate specified in the Note or the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

9. Inspection. Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located, and to examine and make extracts from Debtor's books and records.

10. Further Assurances. Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

11. Insurance. Debtor shall have and maintain insurance with responsible companies in such form, in such amounts and against such risks, liabilities and contingencies as is customarily carried by companies engaged in the same or similar businesses, and in any event being in such form, in such amounts and against such risks, liabilities and contingencies as described to Secured Party in binders and, or, certificates delivered on the date hereof, all such policies showing Secured Party as loss payee to the extent its interests may appear. All such policies also shall be noncancellable without 30 days' prior written notice to Secured Party and at the request of Secured Party shall be delivered to and held by it. Upon default, Secured Party is hereby authorized to act as attorney for Debtor in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts or instruments. Secured Party shall be authorized to apply the proceeds from any insurance to the Obligations secured hereby whether or not such Obligations are then due and payable. Debtor specifically authorizes Secured

Party to disclose information from the policies of insurance to prospective insurers regarding the Collateral.

E. EVENTS OF DEFAULT. Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (i) nonpayment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or any other amount due on any Obligation; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or similar instrument results in the acceleration of maturity of any obligation of Debtor and/or the Borrower (whether to Secured Party or to others); (iii) any representation or warranty made by Debtor and/or the Borrower to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) failure to observe or perform any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor and/or the Borrower to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v) dissolution, liquidation, termination of existence, insolvency or winding-up of Debtor and/or the Borrower or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor and/or the Borrower or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations; (vii) there is a determination that Debtor is not the owner of all Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every kind whatsoever, except for the security interest (and pledges and assignments as applicable) granted hereby or as otherwise permitted in the Loan Agreement) or (viii) the filing of any levy, attachment, execution, garnishment or other process against the Debtor and/or the Borrower or any of the Collateral or any maker, endorser, guarantor, surety, or other party liable in any capacity for any of the Obligations.

F. REMEDIES. Upon the occurrence of an event of default, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

1. Declare Obligations Due. Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

2. Remedies. Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies in the Uniform Commercial Code of Texas, and any and all of the rights and remedies at law and equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to (a) require Debtor to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (b) take possession of the Collateral, with or without process of law, and, in this connection, enter any premises where the Collateral is located to remove same, to render it unusable, or to dispose of same on such premises; (c) sell, lease or otherwise dispose of the Collateral, by public or private proceedings, for cash or credit, without assumption of credit risk; and/or (d) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owned by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

3. Expenses. Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party. These expenses, together with interest thereon from the date incurred until paid

by Debtor at the lesser of the default rate specified in the Note or the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

4. Proceeds; Surplus; Deficiencies. Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

5. Remedies Cumulative. The rights and remedies of Secured Party are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

#### G. OTHER AGREEMENTS.

1. Savings Clause. Notwithstanding any provision to the contrary herein, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable usury laws. If any such excessive interest is so provided for, then in such event (i) the provisions of this paragraph shall govern and control, (ii) neither the Debtor nor his heirs, legal representatives, successors or assigns or any other party liable for the payment thereof, shall be obligated to pay the amount of such interest to the extent that is in excess of the maximum amount permitted by law, (iii) any such excess interest that may have been collected shall be, at the option of the holder of the instrument evidencing the Obligations, either applied as a credit against the then unpaid principal amount thereof or refunded to the maker thereof, and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful rate under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

2. Joint and Several Responsibility. If this Security Agreement is executed by more than one Debtor, the obligations of all such Debtors shall be joint and several.

3. Waivers. Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the

Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

4. Severability. Any provision hereof found to be invalid by courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

5. Use of Copies. Any carbon, photographic or other reproduction of this Agreement or any financing statement signed by Debtor is sufficient as a financing statement for all purposes, including without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

6. Relationship to Other Agreements. This Security Agreement and the security interests (and pledges and assignments as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interests, pledges, assignments, liens, rights, titles or other interests in favor of Secured Party or assigned to Secured Party by others in connection with the Obligations. All rights and remedies of Secured Party in all such agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of the latest security agreement shall govern and control.

7. Notices. Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Debtor at the address of Debtor designated at the beginning of this Agreement. Actual notice to Debtor shall always be effective no matter how given or received.

8. Headings and Gender. Paragraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

9. Amendments. Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

10. Continuing Agreement. The security interest (and pledges and assignments as applicable) hereby granted and all of the terms and provisions in this Agreement shall be deemed a continuing agreement. They shall continue in full force and effect and remain effective between the parties until the earliest of (a) the expiration of four (4) years after repayment in full of all Obligations, or (b) the repayment in full of all Obligations and the receipt by Secured Party of ten (10) days' written notice of revocation of this Agreement.

11. Binding Effect. The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

12. Governing Law. This Security Agreement shall be governed by the laws of the State of Texas and applicable federal law.

EXECUTED this 30th day of November, 1990.

ATTEST:

  
Assistant Secretary

RAILTEX, INC.

By: 

Title: VICE PRESIDENT

- DEBTOR -

THE STATE OF TEXAS

COUNTY OF

BEWAR

§  
§  
§

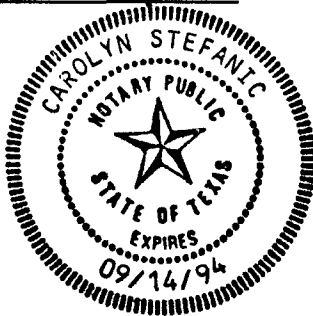
This instrument was acknowledged before me on November 30, 1990, by ROBERT K. LEMDE, VICE PRESIDENT of RAILTEX, INC., a Texas corporation, on behalf of said corporation.

Carolyn Stefanie  
Notary Public in and for  
The State of T E X A S

My Commission Expires:

9-14-94

[SEAL]



94\MLSC\FIBOT#2\AUSTIN RR\COM-2.CSA